IN THE HIGH COURT OF JUDICATURE AT BOBBY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 752 OF 1998

Shantilal K. Surana & Ors. .. Appellants

Vs.

Dayaram Gulzarilal Deval & Ors. .. Respondents

Mr. P.R. Naidu for the appellants.
Mr. M.N. Havnur & Mr. P.M. Havnur for Respondent No.1.
Ms. G.S. Joglekar for Respondent No.2.

CORAM: **B.H. MARLAPALLE,J.**

DATED: **JUNE 7, 2005**

ORAL ORDER:

1. This appeal has been filed by the defendants in L.C. Suit No.3727 of 1990 filed by the present respondent no.1.

2. As per the pleadings the appellants are husband and wife and the husband is a tenant in respect of Room No.2 whereas wife is the tenant in respect of Room No.1 in the chawl known as Chawl No.C-3, Deval Punjabi Chawl, Jawahar Nagar, Khar (East), Mumbai 400 051 and these are referred to as "the suit premises". The defendant no.1 had let out room no.2 under the agreement of tenancy dated 26/2/1989. It is alleged that on 29/5/1990 the defendants demolished the entire suit premises and started new construction in brick masonry walls with an

intention to construct one upper floor with girders and iron beams etc. This was objected to by the plaintiff and they enquired from the defendants whether any permission was obtained from the Mumbai Municipal Corporation in that regard. N.C. complaint bearing No.2218/90 was filed on 29/5/1990 by the plaintiff. The plaintiff, therefore, prayed for the relief of declaration and permanent injunction against the defendants. Prayer clauses (a), (b) and (c) in the said suit read as under :-

> (a) for a declaration that the acts of defendants Nos.1 and 2 in carrying out illegal and unauthorised and unpermitted works by demolishing the suit premises viz. room Nos.1 and 2 of the defendants in Chawl No.C-3 Deval Punabi Chawl, Jawahar Nagar, Khar (East), Bombay-51 which were made of Mangalore tiles roof and C.T. Sheet walls without any loft are illegal, bad in law, void, malafide and that the defendants to restore the suit premises to their original state as they existed at the time of agreement of tenancy, Exhibit A and B to the plaint;
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> (b) for declaration that the defendants No.3 have no right or power to give any repair permission to the defendants Nos.1 and 2 so as to enable them to demolish the existing suit premises viz. room No.1 and 2 in Chawl No.C-3, Deval Punjabi Chawl, Jawahar Nagar, Khar (East), Bombay -61 and to construct the entirely new building with double brick and masonry walls of permanent nature with girders and iron beams with one upper floor;
>
> (c) for a permanent injunction against defendants Nos.1 and 2 restraining them from further carrying out any works or construction

> of alleged repairs of the suit premises viz. alleged repairs of the suit premises viz. room no.1 and 2 in Chawl No.C-3, Deval Punjabi Chawl, Jawahar Nagar, Khar (East), Bombay -51;

3. The defendants in their reply put preliminary objection to the maintainability of the suit by filing Notice of Motion No.2596/98 and by the impugned order dated 22/7/1998 the learned Judge of the Bombay City Civil Court held that the suit filed by the plaintiff could be entertained.

4. Mr. Naidu, the learned counsel for the appellants referred to the scheme of sections 22 and 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "the Act") and submitted that the suit was not maintainable and the court below committed a serious error in law.

5. Sections 22(1)(a) and 42 of the Act read as under:-

> 22(1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority, -
>
> (a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for

> the eviction of an occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or
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> 42. Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under this Act, to determine; and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

6. The bar of Section 22 of the Act would operate in respect of suit or proceedings for obtaining any order or decree for; (a) the eviction of an occupier from any building or land in a slum area; (b) for recovery of any arrears of rent or (c) compensation from any such occupier, or for both i.e. arrears of rent as well as compensation. The trial court rightly held that the suit filed by the plaintiff did not seek such a relief. Section 42 of the Act would be applicable only in respect of any matter which the Administrator, Competent Authority or Tribunal is empowered by or under the Act to determine. The scheme of the Act does not empower either the Administrator, Competent Authority or Tribunal to deal with the reliefs as sought by the plaintiff before the trial court in the pending suit.

7. In the impugned order the trial court also noted that there was no finality to the Notification issued under Section 4 of the Act regarding slum declaration and more particularly in respect of the suit property. The court below noted that on receiving the notice about the declaration of Survey No.149 Hissa No.9 as slum area, the plaintiff had filed appeal No.40/1986 before the Maharashtra Slum Area Tribunal at Mumbai and by judgment dated 22/3/1986 the plaintiff's appeal was allowed. About the CTS No.198/1 to 46 appeal filed by jointly with Satyavati was still pending though delay in filing the appeal was condoned by the Slum Authority and the said decision regarding condonation of delay has been challenged in W.P. No.2753/1992. It was under these circumstances, the trial court noted that there was no finality to the slum area declaration order in respect of the suit property. Thus on both counts no fault could be found with the reasoning given by the trial court in holding that the suit was maintainable and, therefore, the challenge raised in this appeal must fail.

8. In the result, the appeal is hereby dismissed with cost. Interim order, if any, stands vacated.

(B.H. Marlapalle,J.)